

Public Hearing  
September 8, 2005

A Public Hearing was held September 8, 2005 at 7:30 p.m. at the Marilla Town Hall, 1740 Two Rod Road, Marilla, New York. The purpose of the hearing was to consider Local Law No. 3 of the year 2005 entitled “ Local Law Amending the Sign and Billboard Regulations of the Town of Marilla”. The Town Clerk presented affidavits showing that certified copies of the Order Calling a Public Hearing had been published in the Alden Advertiser, the Elma Review and East Aurora Advertiser as well as posting it on the Official Bulletin Board pursuant to the provisions of the Town Law. Officials present were:

John R. Foss, Supervisor  
Barbara Spanitz, Councilman  
Fred Specht, Councilman  
George Gertz, Councilman  
Warren Handley, Councilman

Approximately (23) persons were in attendance. Supervisor Foss asked if there was any interested person who desired to be heard.

Hearing no comment the hearing was closed at 7:34 p.m.

Respectfully Submitted,

\_\_\_\_\_ Town Clerk

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Regular Meeting  
September 8, 2005

A Regular Meeting of the Marilla Town Board was held September 8, 2005 at 7:35 p.m. at the Marilla Town Hall, 1740 Two Rod Road, Marilla, New York. Officials present were:

John R. Foss, Supervisor  
Barbara Spanitz, Councilman  
Fred Specht, Councilman  
George Gertz, Councilman  
Warren Handley, Councilman

Supervisor Foss called the meeting to order and the Pledge of Allegiance to the Flag was given.

**Communications**

Communications were received and read from:

- a) Residents Patrick Commerford and Carol Slammon thanked the Town Supervisor and Town Board for their help in the Water District III extension.
- b) Allied Sportsmen of WNY, Inc. informed the Town of the renewal of their liquor license.

**Committee Reports**

Highway Superintendent Dave Pierce reported that the ditching on Four Rod Road and Parker Road is complete, it may need a little touching up. They will be re-roofing the Town Hall next week.

Councilman Spanitz reported that the Marilla Library is staying open with some financial help from the Town.

Councilman Gertz reported that we will be hosting a drivers safety class at the Town Hall on September 21<sup>st</sup> and 22<sup>nd</sup> from 6:30 pm to 9:30 pm., there will be a sign up sheet at the Town Clerk's Office. He stated that there will be a page on our Town web site for disaster preparedness, it will outline things you can accomplish in your home for protection and preservation. FEMA also has a booklet on line “Are you ready for an emergency”.

Councilman Handley reported he has a list of events; 9/11 candle light service for the Katrina Victims, 9/16 (9am to 2 pm and 7 pm to 9 pm) and 9/17 9 am to 12:30 pm, 9/25 the Paul Zittel Band and a pie auction to benefit the Marilla Library and also the Darbee Family dedication for their donation of playground equipment at the Town Park and picnic tables and benches at the Memorial Pavilion, it will be held at 1:15 at the Town Park and at 1:45 at the Pavilion.

Councilman Specht reported that at the final meeting of the car, truck and motorcycle show they reported that \$15,000 was raised for Mercy Flight. He thinks we are one of the top providers that donates to Mercy Flight

Supervisor Foss reported that he has most of the 2006 budget completed and it looks very positive. The Library situation has been resolved and he will be including funds from the General Fund to keep the library operating at the same level it is operating this year. There will be no general fund tax for this additional cost as we can use some reserves and tighten our belts elsewhere to make it work. He hasn't finished the highway, sanitation, or Fire District budget at this time but should be done shortly. He finished the Water Districts and they will remain the same or in the case of Water District II there will be a reduction in taxes. He doesn't anticipate any increase in Highway or Sanitation Districts and we have to negotiate with the Firemen in the near future.

### **Open Board Presentations From the Public**

None

### **Old Business**

Motion: Councilman Specht moved, seconded by Councilman Gertz to approve the minutes from the Regular Board Meeting held on 8/11/05 and the Special Meeting held on 8/23/05. Motion Carried.

### **New Business**

Motion: Councilman Gertz moved, seconded by Councilman Spanitz to set the date for a public hearing as to the possible use of HUD funds for 2006, within the restrictions of low income or handicapped requirements for October 13<sup>th</sup> 2005 at 7:30 pm. Motion Carried.

Motion: Councilman Handley moved, seconded by Councilman Specht to set the date for the public hearing on Local Law No.3 for the year 2005 entitled "Local Law Amending the Sign and Billboard Regulation of the Town of Marilla" for October 13<sup>th</sup>, 2005 at 7:35 p.m. at the Marilla Town Hall 1740 Two Rod Road, Marilla, NY 14102. Motion

Supervisor Foss set date and time for preliminary budget meeting for October 18<sup>th</sup> at 7:00 p.m. at the Marilla Town Hall.

Motion: Councilman Gertz moved, seconded by Councilman Specht to approve the following resolution pertaining to the proposed Berner Golf Course:

WHEREAS, the Town Board of the Town of Marilla is considering the creation of a new Golf Course Overlay Zoning District in the Town of Marilla in response to a request from Leon Berner for a proposed golf course development in the Town of Marilla; and

WHEREAS, the Town Board had requested that Nussbaumer & Clarke, Inc, the Town Engineers, review the plans presented by Leon Berner for the golf course development and make recommendations to the Town Board and the Planning Board; and

WHEREAS, the Planning Board has already reviewed the proposed golf course development, but because the golf course development is currently not permitted under the existing zoning law which does not meet the current zoning law, the Planning Board believed that they did not need to conduct a detailed review as there was no project before them that they could act upon and as a result they did not address the issues raised by the Town Engineers; and

WHEREAS, the Town Board does not wish to undertake consideration of the creation of a new Golf Course Overlay Zoning District until it receives recommendations from the Planning Board that address the issues raised by Nussbaumer & Clarke, Inc. and other issues raised by members of the Town Board on the proposed development before it.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN BOARD AS FOLLOWS:

1. That the Town Board does hereby request that the Planning Board undertake a more detailed review of the proposal for a golf course development submitted by Leon Berner.
2. That as part of such review, the Town Board directs that the Planning Board respond to the issues and recommendations made by Nussbaumer & Clarke, Inc. dated August 16, 2005 and that in addition the Planning Board consider the following issues:
  - a. whether the single access road on Two Rod Road is sufficient for the number of residences proposed in addition to the golf course access or whether there should be an additional access road on Clinton Street or Two Rod Road or both
  - b. whether a turn lane be required to be constructed to allow traffic to pull over when turning into the development
  - c. whether a traffic light should be required at the entrance of the development.
  - d. such other additional issues as may come up in the Planning Board's review of the Leon Berner proposal.
3. This resolution shall take effect immediately.

Councilman Gertz stated he had talked to an individual on Two Rod Road and there seems to be a lot of misinformation, he feels residents should come to the Town Board and Planning Board Meetings to express your concerns.

Councilman Handley feels there is a lot of areas and questions to be looked at. He thinks that Nussbaumer and Clarke have a very detailed list that does need to be looked at. He looks forward to hearing from the Planning Board on these issues but they are not bound to just these issues and may add to them.

Supervisor Foss wants to add to the motion that the Planning Board be required to hold a Public Hearing.

Councilman Specht stated he thinks it's important for residents to know that a large portion of Mr. Berner's land is zoned rural residential. This Town Board or any other Town Board could not stop Mr. Berner from putting 63 homes on that land. Nussbaumer and Clarke looked at the area and said with wet lands and after archeological studies they could only fit 63 homes in the area. The number of 65 homes is correct because there are 2 already existing lots on Two Rod Road which he could build on tomorrow. He thinks it's important for residents to know we can't prevent him from putting the homes in, we can possibly prevent the golf course, but not the homes.

Councilman Spanitz stated that the Planning Board has been working diligently on this issue, and they are careful with their decisions. They were under the impression that if they didn't approve the conservation overlay district then why go ahead with it. There are other things to address with the golf course and she feels the Planning Board has done a good job.

Motion Carried.

Motion: Councilman Specht moved, seconded by Councilman Spanitz to approve the following resolution pertaining to the Lemke Family:

WHEREAS, the Robert Lemke Family has generously made a donation to the Town of Marilla for the purpose of constructing a shelter in the Town Park; and

WHEREAS, the Town of Marilla, as a result of such donation, has been able to construct a new shelter in the Town Park, which shelter is a significant enhancement to the Town Park.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

- Section 1.     The Town Board does wish to publicly acknowledge the generous donation from the Robert Lemke Family.
- Section 2.     The Town Board, on behalf of the residents of the Town of Marilla also wants to publicly thank them for their generous act.
- Section 3.     The Town Board further wants to state that the Shelter that was constructed as a result of the contribution of the Robert Lemke Family will stand as a permanent monument to their generous gift to the residents of the Town of Marilla.
- Section 4.     That the Town Clerk is directed to send a certified copy of this resolution to the Robert Lemke Family.
- Section 5.     This resolution shall take effect immediately.

The above resolution was duly put to a roll call vote at a regular meeting of the Town Board held on the 8<sup>th</sup> day of September 2005, the results of which were as follows:

Roll Call Vote:

|                          |                          |
|--------------------------|--------------------------|
| Councilman Spanitz – Aye | Councilman Gertz – Aye   |
| Councilman Specht – Aye  | Councilman Handley – Aye |
| Supervisor Foss - Aye    |                          |
| Motion Carried.          |                          |

Motion:       Councilman Handley moved, seconded by Councilman Gertz to approve the following resolution pertaining to the Darbee Family:

WHEREAS, the Myron Darbee has generously made a donation to the Town of Marilla for the purpose of acquiring playground apparatus and Pavilion Park equipment; and

WHEREAS, the Town of Marilla, as a result of such donation, has been able to acquire new playground apparatus and Pavilion Park equipment which significantly enhance the facilities of the Town.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

- Section 1.     The Town Board does wish to publicly acknowledge the generous donation from Myron Darbee.
- Section 2.     The Town Board, on behalf of the residents of the Town of Marilla also wants to publicly thank him for his generous act.
- Section 3.     The Town Board further wants to state that the presence of the playground apparatus and Pavilion Park equipment will stand as a permanent monument to his generous gift to the residents of the Town of Marilla.
- Section 4.     That the Town Clerk is directed to send a certified copy of this resolution to the Myron Darbee.
- Section 5.     This resolution shall take effect immediately.

The above resolution was duly put to a roll call vote at a regular meeting held on the 8<sup>th</sup> day of September 2005, the results of which were as follows:

Roll Call Vote:

Councilman Spanitz – Aye  
Councilman Specht – Aye  
Supervisor Foss - Aye  
Motion Carried.

Councilman Gertz – Aye  
Councilman Handley – Aye

Motion: Councilman Gertz moved, seconded by Councilman Handley to authorize the Town Clerk to refund the \$65 park rental fee to the Newfoundland Club. Motion Carried.

Motion: Councilman Gertz moved, seconded by Councilman Specht to authorize the Town Clerk to send the Te9a to the Department of Transportation to request a traffic study be done at the intersection of Bullis Road and Four Rod Road. Motion Carried.

Motion: Councilman Handley moved, seconded by Councilman Spanitz to approve the following resolution:

The Town of Marilla is in strong support of Congressman Higgins formal letter of comment to the Federal Energy Regulatory Commission (FERC) dated July 18, 2005 and in support of his efforts to secure a more fair and equitable settlement for Buffalo and Erie County from the New York Power Authority (NYPA). As the New York Power Authority prepares to apply for a new license from the federal government to operate the Niagara Power Project, NYPA cannot ignore the environmental impact their equipment, and the project location, have caused to our waterfront. This impact must be properly addressed and remedied in any new license the NYPA receives.

The NYPA's silence on the impact of the ice boom on the environmental, economic, climatic and aesthetic conditions of our waterfront, as detailed by the U.S. Department of the Interior, is unacceptable. If the NYPA continues to ignore the impact of the ice boom, and the Project in general, and does not negotiate in good faith with Buffalo and Erie County, then this community cannot support the granting of another license to the New York Power Authority to operate one of our greatest regional assets, the Niagara Power Project.

The Town of Marilla supports Congressman Higgins formal letter of comment and appreciate your consideration.

Roll Call Vote:

Councilman Spanitz – Aye  
Councilman Specht – Aye  
Supervisor Foss - Aye  
Motion Carried.

Councilman Gertz – Aye  
Councilman Handley – Aye

Motion: Councilman Spanitz moved, seconded by Councilman Specht to authorize payment of \$2,640 to EMW Baseball and Softball. Motion Carried.

Motion: Councilman Specht moved, seconded by Councilman Gertz to set fee of \$100 for Flag Lot Applications. Motion Carried.

### **Report of Town Officials**

Building Inspector John Fronczek submitted a written report with 14 building applications received with fees totaling \$1,563.00, 14 building permits issued with a total value of \$251,750.00, 15 inspections were made and 2 complaints were received for the month of August 2005. The Code Enforcement log indicates a total 175 activities.

Planning Board minutes are posted and they will be meeting on Thursday September 15, 2005 at 7:00 p.m.

The Conservation Advisory minutes have been received and posted.

Marilla Fire Company's Ladies Auxiliary Member Joyce Cullen reported that they are donating \$1,300 to Mercy Flight from their chicken barbeque sales during the Car Show. They will be having a chowder sale on October 16 and serving it with a hard roll and desert beginning at 11 am.

Town Historian Hubert Kutter reported that the Kiwanis Club donated \$1,000 to the Katrina disaster victims. He also wanted to thank Supervisor Foss, Councilman Spanitz, Marty Mummery, Joyce Kaupa for their help in saving the Marilla Library.

**Open Board Presentations**

Councilman Handley thanked Joyce Cullen for her help with the pie auction. He also stated that the Christmas Tree Lighting ceremony will be held on December 3<sup>rd</sup> and he is working on the Veterans Day celebration.

Councilman Spanitz commended everyone for working really hard on keeping the Library open.

Supervisor Foss stated that he is very pleased to have been one of the leaders to help keep the Libraries in Marilla, Alden, Boston, and Eden open. He realizes that not everyone in Marilla uses the Library but many do. He also actively supports youth groups, Senior Citizens, EMW, Tri-town activities, Pavilion concerts, and many other worthwhile activities that not everyone uses but make up a very important part of our Town. All these groups have many volunteers, including the Library, and it is our job to help them be successful and at a reasonable cost. He believes we have done this as we currently have the lowest Town taxes of any Town in Erie County. He personally believes this is what makes Marilla one of the best places to live in Western New York. He believes that closing the Library would steal part of our heritage and the town would be less if this happened.

Leonard Janiga from Jamison Road asked why his contract with the PACE program has not been able to close?

Supervisor Foss stated that he had a conference call today and Gerhardt’s is settled but Wigler’s and Janiga’s have a couple of issues to resolve, but all three should close at the same time and before September 30<sup>th</sup>.

Warren Cullen from Bullis Road stated that the Kiwanis donated half the pop sales to Mercy Flight.

Mary Earsing from Two Rod Road questioned Councilman Gertz about what residents on Two Rod Road are confused and felt the majority of them have been attending Planning Board and Town Board Meetings concerning the proposed golf course.

Councilman Gertz responded that the just wanted to dispel any rumors that may circulate.

Motion: Councilman Handley moved, seconded by Councilman Gertz to approve the claims as follows:

|                                       |              |
|---------------------------------------|--------------|
| General Fund Claims, Vouchers 379-417 | \$ 13,301.33 |
| Highway Fund Claims, Vouchers 150-168 | \$ 13,121.29 |
| Special Districts                     |              |
| Sanitation (SR), Vouchers 85-90       | \$ 5,923.50  |
| Special Fire Voucher 8                | \$ 2,933.25  |
| Water District #2, Voucher            | \$ .00       |
| Water District #3 Voucher 11          | \$ 4,782.47  |
| Water District #4 Voucher             | \$ .00       |
| Community Develop. PACE Voucher       | \$ .00       |
| Community Develop. HUD                | \$           |

Motion Carried.

Motion: Councilman Spanitz moved, seconded by Councilman Specht to adjourn the meeting at 8:17 p.m. Motion Carried.

Respectfully submitted,

|                  |                  |
|------------------|------------------|
| _____ Town Clerk | _____ Supervisor |
| _____ Councilman | _____ Councilman |
| _____ Councilman | _____ Councilman |